

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE:
CIRCUIT CITY STORES, INC., *et al.*,
Debtors.

Chapter 11
Case No. 08-35653-KRH
Jointly Administered

**GREENBACK ASSOCIATES' RESPONSE TO
LIQUIDATING TRUST'S SEVENTEENTH OMNIBUS
OBJECTION TO LANDLORD CLAIMS [Docket # 10061]**

Creditor Greenback Associates, a California general partnership, ("Greenback Associates") hereby responds to Liquidating Trust's Seventeenth Omnibus Objection to Landlord Claims.

1. On November 10, 2008, Circuit City Stores, Inc. ("Debtor") and its related companies filed voluntary petitions for relief under Chapter 11 of the United State Bankruptcy Code.

2. Greenback Associates timely filed its Administrative Expense Claim no. 15007 for post-petition rent and leasehold expenses in the amount of \$65,610.58 and its Proof of Claim no. 13378 for pre-petition rent and leasehold expenses and rejection damages in the amount of \$737,801.12.

3. As set forth in Schedule C of the Objection, the Liquidating Trustee proposes to reduce Greenback Associates' claims but their reasoning is vague and uncertain.

4. As to the Administrative Expense Claim no. 15007, Greenback Associates responds to the Liquidating Trustee's removal of certain sums as follows:

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Counsel to Greenback Associates

(a) \$1,845.23 in Post-Petition Utilities: Pursuant to paragraph 6.5 of the Lease, a copy of which is attached to the Administrative Expense Claim filed by Greenback Associates¹, Debtor was responsible for the payment of "all water, natural gas, electricity, telephone, and other utilities and services supplied to the Premises ..." Debtor failed to pay \$1,845.23 in post-petition utility expenses which were assessed to Greenback Associates as the property owner after Circuit City vacated. Copies of the invoices are attached hereto as

Exhibit A.

(b) \$6,256.50 in Post-Petition Taxes: Pursuant to paragraph 4 of the Lease, Debtor is responsible for the payment of real property taxes attributable to the leased real property. Copies of the tax bills have been previously and repeatedly provided to Debtor and are now attached hereto as **Exhibit B**. Debtor failed to pay post-petition taxes of \$31,732.81 accruing from November 10, 2008 through March 10, 2009, save and except for a partial post-petition payment of \$6,465.88. The reason for the removal of \$6,256.50 from post-petition taxes is uncertain.

(c) \$5,288.42 in Post-Petition Attorneys' Fees: Pursuant to paragraph 15.4 of the Lease, Debtor is entitled to post-petition attorneys' fees. Greenback Associates was required to engage attorneys to enforce the terms of the Lease by gaining Debtors' payment of post-petition taxes, dealing with issues relating to store closure, and the filing of a Proof of Claim and an Administrative Expense Claim.

5. As to the Proof of Claim (general unsecured) no. 13378, Greenback Associates responds to the Liquidating Trustee's removal of certain sums as follows:

(a) \$14,944.50 in Pre-Petition Rent: Pursuant to Article III of the Lease, Debtor has the obligation to pay rent. The pro-rated amount of rent for November 1-9, 2008 is \$14,944.50. According to Greenback Associates' books, it remains unpaid.

(b) \$19,750.18 in Other Damages: Pursuant to paragraphs 7.4 of the Lease, Debtor had the responsibility to surrender the land and Improvements "in good condition".

¹ Should the Court, Debtor or any other party request a copy of the Lease, it will be provided.

Debtor was required to promptly "repair, at its sole cost and expense, any damage or injury to the Premises or any part thereof that is caused" by the removal of Debtors' Personal Property at the surrender of the Premises. (Lease, ¶ 8.3.) Moreover, upon Debtor's default, which includes the commencement of a bankruptcy action, Greenback Associates could contractually recover from Debtor "any and all other amounts necessary to compensate Lessor for detriment proximately caused by the Default by Lessee or which in the ordinary course of events would be likely to result therefrom." (Lease, ¶ 11.2.)

(i) Greenback Associates was required to rekey the premises after Circuit City vacated at a cost of \$238.53, a copy of the invoice is attached hereto as **Exhibit C**.

(ii) After Circuit City vacated the premises, Greenback Associates was required to repair the electrical meter at the premises at a cost of \$2,056.18. Copies of the invoices are attached hereto as **Exhibit D**.

(iii) After Circuit City vacated the premises, Greenback Associates was required to undertake repair and secure the driveways at a cost of \$3,405.00. A copy of the invoice is attached hereto as **Exhibit E**.

(iv) Upon Debtor's vacation of the Premises, Debtor failed to remove its signs from the Premises, the cost of removal of the signage and repairs thereto were estimated at \$14,000. Greenback Associates will provide these invoices shortly.

6. The foregoing averments are based upon the personal knowledge of the following individual:

Andrew C. Gianulias
2264 Fair Oaks Boulevard, Suite 100
Sacramento, California 95825
(916) 614-7900

Mr. Gianulias' declaration is attached hereto.

7. Pursuant to this Court's Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objection ("Order"), Greenback

Associates will provide such additional documentation as it may have upon request.

8. Pursuant to the Order, Greenback Associates' notice address is identical with the address of the undersigned counsel.

WHEREFORE, Greenback Associates prays that this Court enter and order (1) overruling the Objection with respect to Greenback Associates' claims; (2) allow the claims in their entirety; and (3) grant Greenback Associate such other and further relief as this Court may deem appropriate.

Dated: April 21, 2011

GREENBACK ASSOCIATES

By: /s/ Augustus C. Epps, Jr.
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DECLARATION OF ANDREW GIANULIAS

I, Andrew Gianulias, declare:

I am the managing member of Greenback Associates, LLC, a California limited liability company. As to the matters set forth herein, if called upon testify, I could and would competently testify thereto, for I know the matters to be true of my own personal knowledge or my review of the billing records related to this matter which are kept in the ordinary course of business.

Greenback Associates, LLC is the owner of the property located at 7980 Arcadia Drive, Citrus Heights, California. I have read this Response, reviewed the attachments thereto and reviewed Greenback Associates' books. I attest that the rent, expenses and invoices set forth herein specifically relate to Circuit City's occupation of the premises, subsequent default and vacation of the premises.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 5, 2011 in Sacramento, California.

Andrew C. Gianulias

Andrew C. Gianulias

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April 2011, a true and correct copy of the foregoing has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Augustus C. Epps, Jr.

Augustus C. Epps, Jr.

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